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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,827	12/31/2003	Anthony Stephen Fuccione		1826

7590 10/04/2006
ANTHONY S. FUCCIONE
155 OCEAN STREET
LYNN, MA 01902

EXAMINER

SKIBINSKY, ANNA

ART UNIT	PAPER NUMBER
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1631

DATE MAILED: 10/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/749,827	FUCCIONE, ANTHONY STEPHEN	
	Examiner	Art Unit	
	Anna Skibinsky	1631	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-67 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☒ Claim(s) 7,36,38,40 and 44 is/are objected to.
- 8) ☒ Claim(s) 1-6, 8-35, 37, 39, 41-43, 45-67 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Objection

1. Claim 7, 36, 38, 40, and 44 objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should depend on a single claim, for example "2, 3, 4 or 5" **not** "2, 3, 4, and 5". See MPEP § 608.01(n). Accordingly, the claims 7, 36, 38, 40, and 44 are not been further treated on the merits.

Election/Restriction

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1, 2, 6, 8, 20, drawn to evaluating and profiling electrodynamic interaction based on genomic response in cells, by studying of energy and usage within the cell based on **electronic properties of DNA**.
- II. Claims 3, 4, drawn to evaluating and profiling electrodynamic interaction by **creating electronic signature and nature of biological systems**
- III. Claims 5, 9, 17; 19, 21, 22, 26, 29, 34, 35, 37, 48, 50-60 evaluating and profiling electrodynamic interaction using **electromagnetic properties**.
- IV. Claims 10, 61, 62 drawn to evaluating and profiling electrodynamic interaction based on genomic response in cells **creating devices to study biological cells**.
- V. Claims 11, 12, 14, 15, 28, 45-47, 48 drawn to evaluating and profiling electrodynamic interaction based on genomic response in cells through chemical and **mechanical relationships between cellular components**.

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VI. Claim 16 drawn to evaluating and profiling electrodynamic interaction based on genomic response in cells through **biophysical properties of biochemical interactions**.

VII. Claims 13, 18, 33, 39, 41, 42 drawn to evaluating and profiling electrodynamic interaction based on genomic response in cells based on **electron transfer properties** of molecules in the cell.

VIII. Claims 23, 24, 25, 31, drawn to evaluating and profiling electrodynamic interaction based on genomic response in cells based on **ion transfer properties**.

IX. Claim 27, 30, 32, 43 drawn to evaluating and profiling electrodynamic interaction based on genomic response in cells based on the **cell's cycle**.

X. Claim 63 drawn to a method of using **biodynamics to evaluate eastern and western medicine** together.

XI. Claims 64-67 drawn to **simulating the brain nervous system**.

The inventions are independent or distinct, each from the other because:

Inventions I-XI are directed to related methods of evaluating and profiling electrodynamic interaction based on genomic responses in cells. The related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP § 806.05(j).. Furthermore, the inventions

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as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants. In the instant case, the inventions as claimed:

Group I evaluates and profiles electrodynamic interaction based on genomic response in cells, by studying of energy and usage within the cell based on **electronic properties of DNA** while groups II-XI do not.

Group II evaluates and profiles electrodynamic interaction by **creating electronic signature and nature of biological systems** while group I and III-XI do not.

Group III evaluates and profiles electrodynamic interaction using **electromagnetic properties** while groups I, II, and IV-XI do not.

Group IV evaluates and profiles electrodynamic interaction based on genomic response in cells **creating devices to study biological cells** while groups I-III and V-XI do not.

Group V evaluates and profiles electrodynamic interaction based on genomic response in cells through **biophysical properties of biochemical interactions** while groups I-IV and VI-XI do not.

Group VI evaluates and profiles electrodynamic interaction based on genomic response in cells through **biophysical properties of biochemical interactions** while group I-V and VII-XI do not.

Group VII evaluates and profiles electrodynamic interaction based on genomic response in cells based on **electron transfer properties** of molecules in the cell while groups I-VI and VIII-XI do not.

Group VIII evaluates and profiles electrodynamic interaction based on genomic response in cells based on **ion transfer properties** while groups I-VII and IX-XI do not.

Group IX evaluates and profiles electrodynamic interaction based on genomic response in cells based on the **cell's cycle** while groups I-VIII and X, XI do not.

Group X is a method of using **biodynamics to evaluate eastern and western medicine together** while groups I-IX and XI are not.

Group XI **simulates the brain nervous system** while groups I-X do not.

For the reasons listed above Groups I-XI are distinct and separate as classified in the art. Thus a search if done together would entail an undue search burden.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

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Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anna Skibinsky whose telephone number is (571) 272-4373. The examiner can normally be reached on 8 am - 5:30 pm.

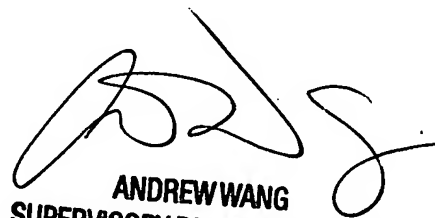
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Wang can be reached on (571) 272-0188. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anna Skibinsky, PhD



ANDREW WANG
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